(Testimony of Robert B. Meriele.)

A. That is defined in our specifications for individual shell eggs, Exhibit 21.

Q. I see the words "U. S. Check" and "U. S. Leakers" noted. What defines a U. S. Check and a U. S. Leaker?

A. Those are also defined in U. S. Exhibit 21.

Q. Directing your attention to the first U. S. grade, the second line thereunder, following the word "shell" is the word "cling." What defines a cling shell?

Mr. Faulkner: We object to that as incompetent, irrelevant and immaterial, not binding on the defendants.

Mr. Hippeli: I am attempting to show that the information contained on this chart is contained in the United States Exhibit No. 24 for Identification, to which Mr. Faulkner has objected on the ground that the information contained in the chart that is in evidence is not included in the Exhibit 21 for Identification.

Mr. Faulkner: The Court has permitted the document in evidence, if the Court please, and I understood your Honor sustained my objection on Exhibit 21 and indicated to Mr. Hippeli that he had not brought home that document to the defendants. Now he is trying to bind the defendants with this document in circumventing the Court's ruling. In other words, if he is going to have everything in Exhibit 21 read in evidence by the witness, unless he brings it home to the defendants——

(Testimony of Robert B. Mericle.)

The Court: You may indicate what this chart indicates. You may develop that.

Mr. Hippeli: What I am attempting to do, your Honor, is to get United States Exhibit No. 21 into evidence and the chart, knowledge of which, has been brought home to the defendants, the information contained on that chart, and a further definition of the terms contained on the chart are set forth in Exhibit 21, which I desire to offer after I bring that fact out from the witness.

Mr. Faulkner: But that does not bring it home to the witness. That was the point of the Court's ruling as indicated by the Court.

The Court: They are not bound by it unless it is established that they were served with a copy, had knowledge of it, or had brought home in some manner to them the contents of it. We will take a recess for a few minutes.

(Recess.)

Mr. Hippeli: Q. Referring to United States Exhibit 21 for Identification, United States Standards for Quality for Individual Shell Eggs——

Mr. Faulkner: We object to that as a designation for that [67] document, your Honor. I have had a chance to look at it. The document is this: This is a document to be employed for the grading and certification of shell eggs by official graders of the United States. That is all it is, and that is all it purports to be, an inter-communication between one department to another to guide U. S. graders, not to guide the business. We have lots of them to

(Testimony of Robert B. Mericle.)

guide the business, and when they come along we have no objection.

Mr. Hippeli: His objection is to my use of the name which appears on the top of the document. I am using that to identify the exhibit.

Mr. Faulkner: It is Exhibit 21.

Mr. Hippeli: Does your Honor care to rule on that?

The Court: There is nothing before the Court.

Mr. Faulkner: I was not objecting; I was advising the Court what the document on its face purports to be.

Mr. Hippeli: Q. Doctor, directing your attention to United States Exhibit No. 21 for Identification, I will ask you if you ever saw that exhibit or a copy of that exhibit down at the Nye & Nissen plant in San Francisco? A. Yes.

Q. Approximately when, please?

A. September, 1944.

Q. Who was present?

A. Mr. Moncharsh and Mr. Goddard.

Q. Was anyone else present? A. No.

Q. Was any conversation had at that time?

A. It was with reference to the discussion of individual shell egg quality. [68].

Q. Will you tell us what the conversation was.

Mr. Faulkner: We will object to it as incompetent, irrelevant and immaterial, hearsay, and not testimony that will have any effect on the offenses charged as committed in the month of May, 1944.

The Court: A conversation with whom?

(Testimony of Robert B. Mericle.)

Mr. Hippeli: It is a conversation between Dr. Mericle, Abraham Moncharsh, one of the defendants, and Mr. Goddard, another one of the defendants, pertaining to United States Exhibit 21 for Identification.

Mr. Faulkner: Not binding on any other defendant except those named.

The Court: The objection will be overruled. You may answer. It is limited to the conversation with the defendants. Did you fix the time?

Mr. Hippeli: Yes. September, 1944.

Mr. Faulkner: Five months after the claimed commission of the substantive offenses, your Honor, a conversation between two of the men, is now offered as binding on all the defendants on all counts.

The Court: I will allow it as a preliminary question.

Mr. Hippeli: It is within the period of the conspiracy, too, your Honor.

Mr. Faulkner: I did not make any objection on the conspiracy count, Mr. Hippeli. I objected to a conversation in [69] September, 1944, which has for its purpose the binding of other defendants on a straight offense charged in May, 1944, unless they were present at that conversation.

The Court: It is limited at this time to the defendants that he had the conversation with.

Mr. Hippeli: Q. Will you tell us the substance of the conversation, Doctor, please?

A. It was a discussion between the quality of

(Testimony of Robert B. Mericle.)

Grade A and Grade B eggs, and in the discussion the specification was checked as to what was interpreted as a Grade A egg and what the different quality factors were as they were written in the specification.

Q. Did Mr. Moncharsh refer to Exhibit 21?

A. Yes.

Q. Did Mr. Goddard? A. Yes.

Q. How did they refer to it?

A. As the specification, copies of the specification.

Q. What did they say about it?

A. It was a matter of interpretation on the interior quality of shell eggs.

Q. Were they referring to that in interpreting the interior quality of the eggs? A. Yes.

Mr. Hippeli: At this time, your Honor, I will re-offer Exhibit 21 for Identification in evidence, in the first place as to the defendant Nye & Nissen, the corporation, the defendants Abraham Moncharsh and Ruby Goddard, and secondly I offer it in evidence as against all the defendants because of the fact that these standards are an official regulation of the [70] Department of Agriculture, of which the Court will take judicial notice. They are a matter of law of which the defendants are presumed to have knowledge.

In that regard I have a citation to a case. If your Honor cares, I will read it to you. It is to the effect that the regulations of the Department of Agriculture, the rules and regulations, are mat-

(Testimony of Robert B. Mericle.)

ters of which the Court takes judicial notice. I submit that they are matters of law which the defendants are presumed to have knowledge of.

Mr. Faulkner: Your Honor, I think I can clear this up by a question of this witness.

Q. Doctor, isn't it a fact that in 1942, 1938, 1941, 1944 and 1945 that the Department of Agriculture mailed to people in the poultry and the egg business certain official documents relating to the standards of eggs? A. Yes.

Q. And they did it in 1943 and 1944, isn't that correct? A. Yes.

Q. Exhibit No. 21 is not one of those documents, is it? A. Yes.

Q. Now, Dr. Mericle, isn't this document that you sent to Nye & Nissen relating to grades of eggs? Isn't that what you sent to companies like Nye & Nissen? Yes, or no, please? A. Yes.

Q. Isn't that what Nye & Nissen acts, on that document?

Mr. Hippeli: May we identify that document, please, for the record? [71]

Mr. Faulkner: Defendant's Exhibit A, your Honor? We will take the letters.

Mr. Hippeli: Q. Read what is on the top of that document, Doctor?

A. "Tentative U. S. Standards and Weight Classes for Consumer Grades of Shell Eggs."

Q. And that is the document that you are referring to, Doctor?

Mr. Faulkner: That is the document Nye &

(Testimony of Robert B. Mericle.)

Nissen had. They did not have this document, Mr. Hippeli.

Mr. Pratt: I object to that statement of counsel. The evidence is already that they did have this document.

Mr. Faulkner: I withdraw the statement, your Honor.

Q. Isn't that the document that the Department sends to the producer or the man engaged in the business, such as Nye & Nissen?

A. Pardon me?

Q. Isn't that the document that the Department of Agriculture sends to companies like Nye & Nissen? A. It is one of them.

Q. Did I understand you to say that you saw that document in the possession of Mr. Moncharsh in September of 1944? A. Yes, sir.

Q. That document came from Mr. Hippeli's office; from your office, didn't it?

A. Not from my office.

Q. It came from Mr. Hippeli, didn't it?

A. Yes.

Q. Then you did not see that document in Mr. Moncharsh's possesion, did you?

A. Technically not that particular document.

Q. Did you read the document that you saw in his possession? A. Yes.

Q. You read it. All of it?

A. The particular part that we were interested in or concerned in at the time.

Q. Isn't that the document that you read?

(Testimony of Robert B. Mericle.)

A. No.

Q. Are your certain of that? A. Yes.

Mr. Hippeli: May I suggest that this document Mr. Faulkner has in his hand be marked for identification.

The Court: It may be admitted and marked.

(The document in question was marked Defendants' Exhibit A for Identification.)

Mr. Faulkner: We renew our objection, your Honor, to Exhibit 21.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

Mr. Hippeli: We offer Exhibit 21 into evidence.

Mr. Faulkner: Your Honor, Mr. Sullivan calls my attention to the fact that in the legal argument addressed to your Honor by Mr. Hippeli he referred to that document as a regulation. It is not a regulation. It does not purport to be a regulation. It is an instruction to official graders and it is not a regulation of the Department of Agriculture that comes within the meaning of that case. I imagine, your Honor, there is not a scintilla of difference between the paper we produced so far as egg standards are concerned and this document. My point [73] is that this document does not bind us, your Honor. It does not purport to. It is not supposed to. And it is not a regulation.

Mr. Hippeli: Mr. Faulkner has stated that this is merely a directive, an inter-departmental directive. I maintain that the document shows on its face that it is the Department of Agriculture's

(Testimony of Robert B. Mericle.)

statement of what the standards for an individual shell egg shall be, and the preamble of the document, itself—may I hand a copy to your Honor—the title on the very top says, "United States Standard for Quality for Individual Shell Eggs." The next title is, "Order of Promulgation of Standards." And then it continues, "By virtue of authority vested in the Secretary of Agriculture by a particular statute—" and the last sentence thereof is, "These standards shall supersede all standards of individual quality of shell eggs previously promulgated under such authority."

Mr. Faulkner: You do not read this. It says, "The following standards are promulgated as official United States Standards for quality of individual shell eggs, to be employed for the grading and certification of shell eggs by official graders of the United States Department of Agriculture and to be in force and in effect on January 2, 1943, and thereafter, as Congress shall provide the necessary authority therefor, unless amended or superseded by standards hereinafter prescribed and promulgated."

They are standards to be employed by official graders. The other document, your Honor, is what Nye & Nissen and those [74] other firms receive.

Mr. Hippeli: The witness has testified they are the standards of the Department of Agriculture. They are the standards in accordance with which the United States Department of Agriculture graders grade a particular individual egg. They are

(Testimony of Robert B. Mericle.)

the standards in accordance with which sales were made, the witness has testified, to the War Shipping Administration, the Coast Guard, and the Navy. They were the standards in accordance with which these sales were tested by Dr. Mericle, himself, the United States Department of Agriculture inspectors, under his service. We have not produced our whole case here, but in the indictment, itself, the charge against the defendants is that they were defeating this inspection service. The inspection service are inspecting in accordance with these standards. Furthermore, the indictment in the substantive counts charges that the defendants, themselves, were selling a medium A egg to the United States.

It will be further brought out from the witness that this medium A—the A referred to is the A referred to on this chart. The A referred to is the A grade of egg which is defined in the standards that are before the court now. At the present time I believe Mr. Faulkner has brought out from the witness that Exhibit 21 was mailed to the defendants. It was seen in their presence. It was discussed with them down there. And the witness has further shown that those are [75] the standards of the United States Department of Agriculture. The Government therefore renews its offer.

The Court: The Court is now prepared to rule. What is before the court?

Mr. Hippedi: The admissibility of U. S. Exhibit 21 into evidence.

(Testimony of Robert B. Mericle.)

The Court: It may be admitted and marked. The objection will be overruled.

Mr. Faulkner: Exception.

(U. S. Exhibit 21 for Identification was thereupon received in evidence.)

Mr. Hippeli: Q. Doctor, I will ask you generally what are the United States grades of eggs?

Mr. Faulkner: We object to that, your Honor, because this document received in evidence speaks for itself and that determines it. This document determines what the grades are under the ruling of the court.

The Court: The only way the jury will be able to know that is to develop the facts.

Mr. Faulkner: Read it to them.

The Court: Read it to them if you wish.

Mr. Hippeli: The way the Government desires to present this, your Honor, is to have the witness, in reading the chart to the jury, to explain to the jury what is meant by that.

The Court: Very well, proceed. [76]

Mr. Hippeli: Q. My question, then, Doctor, is what are the U. S. grades of eggs?

Mr. Faulkner: We object to that on the ground the best evidence of what the U. S. grades of eggs are are the regulations.

The Court: The objection may be overruled. You may answer.

A. The grades for individual shell eggs are explained in the pictures on the chart, which, as you

(Testimony of Robert B. Mericle.)

will see, are U. S. Grade AA, U. S. Grade A, U. S. Grade B, and U. S. Grade C.

Mr. Hippeli: With your Honor's permission, I have several of these cards here, and I would be pleased to hand one to the Court so he may follow the explanation, and there is sufficient here so the jury may each be handed a card.

Mr. Faulkner: We object to that as a demonstration, your Honor. It is not the proper method of presenting a case.

The Court: Proceed. Pass one to the jury.

Mr. Faulkner: Exception.

Mr. Hippeli: I hope I have enough, your Honor.

The Witness: You will note in checking the chart that, as I mentioned previously, there are four grades: U. S. Grade AA, U. S. Grade A, U. S. Grade B, and U. S. Grade C. There are various qualities, as you will notice on the left, which state the shell, the air cell, the yolk, and the white. Various quality factors go to make up the respective grades. [77] Let us cover the U. S. Grade AA. Under the shell requirements you will note it says, "Clean; unbroken; normal." That means that the shell is clean, the shell is unbroken, there are no cracks, no checks, and that the shell is normal, that is, normal in shape. And the picture, here, shows what is meant by normal, normal egg shape.

Q. Does it show anything else but clean? What are the other official——

A. We have different classifications for dirty shells, which are classified separately, as you will

(Testimony of Robert B. Mericle.)

note down in the lower left-hand corner in small type, referred to previously. There is U. S. light dirty, and U. S. dirty. That is where the shell has become stained or dirty with either loose, adhering dirt, or in other cases small stains, or in cases where there are large stains on the egg shell, or in cases where there is sufficient adhering dirt that it covers practically the entire shell. Those are classified in either U. S. light dirty or dirties.

Q. Are there any classifications of unbroken shell?

A. Yes, a classification also in the note of U. S. checks and U. S. leakers. The U. S. check is an egg where the shell, itself, has been cracked but the shell membrane inside the shell lining it has not been broken. It is just a crack in the continuity of the shell. A leaker is the same egg with a cracked shell, except the inner shell membrane has been cracked and the contents are free to exude or leak from [78] the egg.

Checking now your U. S. grade AA, the air cell, it states the air cell must be one-eighth inch in depth, regular, or slightly wavy. Now, the air cell is this little light-colored space at the top of the egg. You can see the size of it and you can see the depth of it. The maximum depth is one-eighth inch.

Q. Doctor, in explaining the yolks and air cells possibly this chart may be of assistance to you.

I would like to have a chart entitled, "Eggs, retail grades and uses" marked for identification.

(Testimony of Robert B. Mericle.)

(The document was marked U. S. Exhibit 23 for Identification.)

Mr. Faulkner: I should like the court to see this document when the Government offers it in evidence.

Mr. Hippeli: Now, will you continue? You were describing the air cell to the jury.

Mr. Faulkner: Just a minute. We object to the witness using something that was not prepared by him or under his direction. This is something prepared by the Poultry and Egg National Board of the Consumers Association.

Mr. Hippeli: Q. Does 23, the last egg chart handed you, depict the grade of eggs in conformity to the United States standards for individual shell eggs?

Mr. Faulkner: We object to that as calling for the opinion [79] and conclusion of the witness.

The Court: If he knows he may answer.

A. Yes.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. Have you used this chart in explaining the grades of eggs to your graders and inspectors?

Mr. Faulkner: We object to that as not binding on the defendants. The question before this court is what the industry uses, how they grade eggs, not how a class room of inspectors are instructed, your Honor.

The Court: You are limiting this to the inspectors and they are not bound.

(Testimony of Robert B. Mericle.)

Mr. Hippeli: My next question is, as Mr. Faulkner has suggested, does this pertain to the industry?

The Court: Proceed.

A. Yes, sir.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. Have you used this egg chart in explaining the character and quality of eggs to the industry?

Mr. Faulkner: Your Honor, Nye & Nissen Company have been in the business many years longer than this gentleman. Did he ever talk to them about it? They can't bind Nye & Nissen and the defendants by some lectures.

Mr. Hippeli: I am merely going to use this for the purpose of demonstrating to the jury the grades of eggs. [80]

Mr. Faulkner: I object to a trial by demonstration, if the Court please. That is, in that sense it is not evidence.

Mr. Hippeli: I am not offering it in evidence. I am offering it to the witness to use for the purpose of demonstrating the grades of eggs and what appears on this chart he says conforms to the grades set forth by the United States Department of Agriculture.

Mr. Faulkner: My understanding of the rule of law is, your Honor, you are not to use any document to refresh the recollection of the witness on the stand unless it was prepared under his direction or control.

(Testimony of Robert B. Mericle.)

The Court: This is a document that was prepared in Chicago.

Mr. Hippeli: It is a private publication but it contains the grades to conform to the United States grades. It is a convenient chart.

The Court: Q. Is that a fact?

A. Yes.

The Court: Proceed.

Mr. Faulkner: Exception, your Honor. It would be like the witness testifying as an expert and reading his answers from a text-book.

The Court: It goes to the weight of the testimony. I will allow the witness to determine that.

Mr. Faulkner: Exception. I object to the witness testifying [81] from any document that has not been received in evidence and there is no foundation for it going in evidence.

Mr. Hippeli: Q. Doctor, you were explaining the air cell to the jury.

Mr. Faulkner: Just a moment. I object to a witness using any document that will aid him in testifying that is not in evidence in this case.

The Court: At this time let us confine ourselves to this chart. Proceed.

The Witness: (Referring to U. S. Exhibit 22): We were discussing the air cell. Brief mention was made that the air cell must be one-eighth inch in depth, must be regular or slightly wavy. The air cell, as your will note, is the top of the egg, the large end which is up. Reference is made to the yelk. The outline is slightly defined, free from defects or

(Testimony of Robert B. Mericle.)

blemishes. The yolk, as you will see, is right in the center of the egg. There is no yolk outlined between the outside of the yolk and the white. You cannot see the yolk outlined. The white is clear and firm, as you will note from the picture of the egg, here. The white is clear and firm. That will be noted on its broken-out appearance. The egg, when it is broken on a flat surface, an egg of double egg quality will have an upstanding yolk. The yolk will be in the center of the thick white. The white of the egg is divided into two parts. There is a thick white and [82] a thin white. The yolk is in the center of the thick white, well centered, and it is held in an upstanding, in more of a cup fashion. You take a cross section and look at the yolk on a horizontal basis and you readily see the white adhering up from the side of the yolk and keeping it small and in the thick white. The white, as it says here, should be clear and firm. That covers the individual quality factors of the double egg.

The Grade A, you will note, has the same shell requirements as the AA, that is, it must be clean, unbroken, and normal. As we previously mentioned, in eggs with light, dirty, or dirty shells are graded separately, classified separately. The air cell here shows two-eighths of an inch in depth. You will note here an enlarging of the air cell at the top. You see the maximum depth of the air cell there is two-eighths of an inch. The yolk is outlined, fairly well defined. You can almost take a pencil and draw an outline around the yolk. That

(Testimony of Robert B. Mericle.)

was the way we designate the different quality factors here between the grade A and the grade AA. The white must be clear and reasonably firm. You can see there is a breakdown in the white, there. If you took a cross section of this egg you would see the yolk is not as upstanding as it is in the AA. The thick white is not as much around the side of the yolk as it is in the AA. Broken out on a flat surface, you can see the thick white larger than it will [83] be in the previous egg discussed.

The Grade B. You will note here it is the same, as far as the shell is concerned, with reference to cleanliness. The Grade B must be a clean egg. The shell must be unbroken. However, they do permit slightly abnormal shells, a slight abnormality there with reference to shape. Maybe a slight ridge around it or a slight roughness, which is permitted —slight abnormality. The air cell there again, you will note, has had another one-eighth shrinkage added to it, which makes a three-eights inch shrinkage in the air cell. It is very small. It may be free. That is, at times this air cell is completely loose from the egg and may move from one end to the other, depending on which end of the egg is held upright. As to the yolk, the outline is well defined, and may show definite but not serious defects. Here you can readily see the yolk. You can take a pencil and draw the exact outline of the yolk. And it may show definite but not serious defects. Those are defects which will appear on the surface of the yolk, which can be detected before the candle in the

(Testimony of Robert B. Mericle.)

process of candling. The white may be slightly weak. There, again, you will note that when this egg is broken on a flat surface the white will spread out considerably more than it will in the Grade AA. You will see the same variation between the grade B and the grade A as you would see between the grade A and the grade AA with reference to the white. As to the actual breakdown of the white, you [84] have noticed when you have broken a grade B egg into a skillet, when they are poached they will run to the side of the skillet, whereas in the AA the thick white will hold it in one place.

With respect to Grade C, the same shell requirement is there. It must be clean and unbroken. It may be abnormal. By abnormal, there are the exceptionally long eggs, the eggs that do not conform to the normal shape as we see here. Maybe it reaches around the center, maybe reaches around the small end—different abnormalities in the shell shape that you see. As to the air cell, you will note here the egg has shrunk. There has been evaporation from the egg. You will notice the air cell here is continually increasing in size as the moisture evaporates from the egg. It may be over three-eighths of an inch in depth. It may be bubbling. There, again, your air cell may be broken down into five or six full air cells, or any number, which will be individual air cells. The yolk: The yolk may be plainly visible. It may appear dark. You see the darkness on here that it shows? It may show visible germ development, but not to the extent

(Testimony of Robert B. Mericle.)

where it shows any blood ring, at the blood ring stage. But you will get a germ development in the first two or three days. It is still an edible egg before it develops far enough to be at the blood ring stage. And the white: The white here may be clear—it is clear, but it may be weak and watery. That is, when the egg is broken out, the broken-out appearance, [85] you will see the white will have a tendency to spread, almost in the order of water when it is poured from the cup. The yolk in the same instance will be flat and spread considerably. That, briefly, covers the individual grades of eggs on Grade AA, A, B and C.

As I mentioned briefly here earlier in the discussion of grades, we have set up U. S. Light Dirty and U. S. Dirty. That takes in conditions pertaining to the shell alone. That is, small stains, such as those where less than one-eighth of the shell's surface is affected are graded and classed as light dirty; the eggs where more than one-eighth of the shell surface is covered with stains, having large parcels of dirt adhering and such, are classified as Dirties. They are graded and packed separately.

Mr. Hippeli: Q. I suggest that you explain how the U. S. grades of eggs are manifest in a hardboiled egg.

A. In a hardboiled egg, if you take and hardboil each of the eggs as shown here and take a cross section through the center of the egg, you will note that the yolk in the AA is well centered in the egg. There is an even layer of white around the surface,

(Testimony of Robert B. Mericle.)

and that shows the thick white held the yolk in the center. The yolk was well centered. And there was thick white to hold it in that position.

Q. What about the air cell in that egg?

A. The air cell would be small. It would be one-eighth of an inch or less. That [86] can be readily seen when the egg is opened as to the depth of air cell. On the Grade A——

Mr. Faulkner: There is no question, your Honor.

Mr. Hippeli: There is. I have asked the witness to explain how the U. S. grades of eggs are manifested in hardboiled eggs.

Mr. Faulkner: You asked him a question about a hardboiled egg and he gave the answer. I submit there is no question pending before the court.

The Court: Read the question.

(Last question read by the reporter.)

The Court: You may answer.

Mr. Faulkner: He has completed his answer to that question.

The Court: Q. Did you?

A. Yes.

Mr. Hippeli: Q. How is U. S. Grade C, for example, manifested in a hardboiled egg?

A. The cross section of U. S. Grade C will show yolk over to one side, quality very low with no white. On a cross section the yolk will be over against the shell on one side. There will be considerable white on one side of the yolk in a cross section, and very little or no white on the other, to show that the yolk is not well centered, and the

(Testimony of Robert B. Mericle.)

white of the egg had broken down to the extent where there was very little or no thick white in the Grade [87] C, and that the white was weak and watery at the time we hardboiled that.

Q. Are there any types of eggs which are of no United States grade? A. Yes.

Q. What are they? A. Loss, inedibles.

Q. How is loss distinguished from inedibles? What do you mean by loss?

A. Loss are eggs which would be classified as inedibles.

Q. What eggs are inedible?

A. Various eggs which are inedible, which consist of black rots——

Mr. Faulkner: Just a moment, Mr. Witness. The question has been asked, what eggs are inedible. Is that supposed to be under the standards laid down by the Government, or the witness' own opinion? There are so many eggs. The eggs that have already been consumed are inedible, because they no longer exist.

Mr. Hippeli: Q. Does the United States Department of Agriculture define a grade of "No grade"? A. Yes.

Q. What is it?

A. Any grade of eggs which contain excessive amount of loss are eggs of no grade.

Q. Does the United States Department of Agriculture Standards define loss?

Mr. Faulkner: We object to those general questions, your Honor. What standard? In other

(Testimony of Robert B. Mericle.)

words, if it is before the court and he is testifying what the document is, we know it [88] has some semblance of being official. But if it is some other regulation that is brought before the court, is speaks for itself.

The Court: Read the question.

(Question read.)

The Court: The objection will be overruled. He may answer.

Mr. Faulkner: Exception.

A. Yes.

Mr. Hippeli: Q. What is that definition, please?

Mr. Faulkner: We object to it unless it was in existence during the period of the indictment, your Honor.

Mr. Hippeli: Q. I direct your attention to United States Exhibit No. 21, Item 35.

Mr. Faulkner: We object to that on the ground the document speaks for itself.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

A. Item 35 states: "Loss: Eggs that are inedible, smashed, contaminated, or containing bloody white, large blood spots, or large and unsightly meat spots or other extraneous and foreign material are classed as loss."

Mr. Hippeli: Q. What are bloody whites?

A. Whites which contain blood. There is blood diffused through the white of the egg.

Q. What are large blood spots?

A. Large blood spots are large clots of blood which are either—— [89]

(Testimony of Robert B. Mericle.)

Mr. Faulkner: I object to this class of examination, your Honor. Here is a document that defines every term. Now, which is to guide the jury? The description of these terms in the regulation or the witness' testimony? In other words, there is not a term he has defined that is not defined in the regulations. We are not bound by the witness' definition of terms when every one of them is defined in a document your Honor has accepted in evidence—every one of those terms.

The Court: The objection will be overruled. Proceed.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. What are large blood spots, please?

Mr. Faulkner: Same objection, your Honor. Large blood spots are defined and small blood spots are defined in the regulation.

Mr. Hippeli: Are they?

The Court: He may answer. Proceed.

The Witness: Large blood clots are clots that are in the egg at the time of laying, due to a mishap or the chickens being frightened or such at the time the egg is being formed. This blood clot is laid down in the process of egg formation. It is in the egg at the time the shell is put on and consequently appears in the egg before the candle at the time of candling.

Mr. Hipelli: Q. What are meat spots? [90]

Mr. Faulkner: Same objection, your Honor.

(Testimony of Robert B. Mericle.)

Meat spots are described in the regulation, not by the witness.

The Court: He may answer.

The Witness: Meat spots are small blood spots which on microscopic examination are shown to be real small clots or drops of blood which do not any longer show the red hemoglobin.

Mr. Hippeli: Q. What other foreign materials may be in an egg?

A. Such foreign materials as we have seen. Round worms have been found in eggs at the time of candling.

Q. Directing your attention to Item 35 appearing upon the exhibit containing U. S. Standards for Individual Shell Eggs, will you explain to the jury what inedible eggs are, please?

Mr. Faulkner: Same objection, your Honor. The definition of the term is clearly defined there.

The Court: You may read the definition.

The Witness: "Inedible eggs: Under the Food, Drug & Cosmetics Act eggs that are filthy, putrid, decomposed or otherwise unfit for food in whole or in part are adulterated. Eggs of the following description are classed as inedible: Black rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green white, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings."

Q. Is that all you have on that?

A. "Eggs containing embryo chicks after or beyond the blood ring stage, and any eggs that are filthy, decomposed, or putrid." [91]

(Testimony of Robert B. Mericle.)

Q. What are black rots?

A. Black rots are eggs that are decomposed to the extent that they appear black before the candle and on opening have a putrid odor, the contents are blackish and black in character.

Q. What is white rot?

A. White rot is a breakdown of the white of the eggs, where there has been a decomposition take place in the breakdown of the white.

Q. What are mixed rots?

A. Mixed rots or addled eggs is where the yolk membrane the membrane that holds the yolk in a sac is broken and this is mixed with the white of the egg. Call it either a mixed rot or an addled egg.

Q. And a sour egg?

A. A sour egg is one in which the white is broken down and will smell sour after breaking.

Q. Green whites?

A. Green whites will appear greenish before the candle and on breaking will have a very definite greenish characteristic.

Q. What about stuck yolks?

A. Stuck yolks are yolks which have stuck to the shell membrane to such an extent that they will not break loose when the egg is twirled before the candle.

Q. Moldy eggs?

A. Moldy eggs are eggs that have mold. The mold spores have penetrated through the shell,

(Testimony of Robert B. Mericle.)

through the shell membrane, and are growing inside the egg.

Q. What are musty eggs?

A. Musty eggs are eggs that appear musty on the smell, and the smell has penetrated the content of the egg so that the egg tastes and has the characteristic [92] of must.

Q. What are eggs showing blood rings?

A. Blood rings are found in fertile eggs where the temperature has been high enough to incubate the eggs and start the germ to develop. This germ will develop up to the blood ring stage and, as a rule, it is edible up to the blood ring stage, and from the blood ring stage on it is ruled as inedible.

Q. Now, the next specification are eggs containing embryo chickens. I believe we know it by that name.

The Court: It is time for adjournment. I will ask those in the court room to remain seated until the jury retires. Keep in mind the admonition of the court and return at two o'clock. The jurors may be excused.

(Thereupon a recess was taken until two o'clock p.m.) [93]

Afternoon Session, 2:00 o'clock p.m.

Mr. Pratt: If the Court please, this is just an explanation. The Government subpenaed the corporation to produce a large number of original records of the company, namely, purchase orders. Mr. Faulkner tells me that the individual who was

bringing these documents was here a few moments ago and has gone. Only a few these documents, Mr. Faulkner tells me, have been found in the records. I should like to put this office manager, I think he is, on the stand briefly to explain the character of search of records that he made. Mr. Faulkner tells me he will be back in a little while, in ten or fifteen minutes, and I should like, when he comes, to withdraw the witness who is on the stand and put him on briefly for that purpose.

Mr. Faulkner: He was here this morning. We thought he would never be reached. He came back at two o'clock. I just assumed he would not be reached today.

The Court: Very well.

Mr. Hippeli: Doctor, you will resume the stand, please.

DR. ROBERT B. MERICLE,

recalled.

Direct Examination (Resumed)

Mr. Hippeli: Q. Defendants' Exhibit A for Identification is a document entitled, "United States Department of Agriculture, [94] Food Distribution Administration, Tentative U. S. Standards and Weight Classes for Consumer Grades for Shell Eggs." Doctor, this morning your testimony referring to Government's Exhibit 21, referred to the U. S. Grade for an individual egg: is that correct?

A. Yes.

(Testimony of Robert B. Mericle.)

Q. Has the Department of Agriculture set forth standards for classes of Consumer grade eggs?

A. Yes.

Q. Were those standards issued to you?

A. Yes.

Q. Is a copy of those standards contained in Defendants' Exhibit A for Identification?

A. Yes.

Q. Do the inspectors of the United States Department of Agriculture inspect eggs in and around San Francisco Bay area in accordance with those Consumer standards for classes of eggs?

A. They do.

Q. When were those standards put into effect, please?

A. These were put into effect in December, 1942.

Q. Are they still in effect? A. Yes.

Q. Have they been modified? A. No.

Q. Have you graded classes of Consumer grade eggs in accordance with the standards contained in Defendants' Exhibit A for Identification?

A. Yes.

Q. Have you so graded eggs in and around the San Francisco Bay area? A. Yes.

Q. Have Department of Agriculture inspectors under your supervision graded in accordance with those standards? [95]

A. They have.

Q. Have you taught those standards in the egg grading school that you referred to in your testimony this morning? A. Yes.

(Testimony of Robert B. Mericle.)

Q. Have you had occasion to grade eggs at the defendant Nye & Nissen's plant in San Francisco?

A. Yes.

Q. When have you done this?

A. At various times since I have been located in San Francisco since 1943.

The Court: Fix the time.

Mr. Hippeli: He said since 1943. About what time?

A. From the time I was assigned to this area in October, 1943 to the present.

Q. During that time have you graded classes of eggs or cases of eggs in accordance with the standards contained in Defendants' Exhibit A?

A. Yes.

Q. During the period of time from the latter part of 1943 to the present time have you accompanied other inspectors of the United States Department of Agriculture in grading down at the defendants' plant in San Francisco? A. I have.

Q. Have you seen those inspectors grade cases or classes of eggs in accordance with the standards for consumer grades set forth in Defendants' Exhibit A?

Mr. Faulkner: We will object to the form of the question, whether he saw them do it in accordance with that. It calls for his opinion and conclusion. He doesn't know the state of mind of the men. [96]

The Court: The question is, did he observe them do it.

Mr. Hippeli: I will reframe it.

(Testimony of Robert B. Mericle.)

Q. In 1943, from the latter part of 1943 to the present time have you observed your inspectors at the defendant's plant in San Francisco grade classes of eggs in conformity to Consumer grades?

Mr. Faulkner: We will object to that as calling for an opinion and conclusion and not the best evidence.

The Court: "In conformity" is objectionable. State what they did.

Mr. Hippeli: Q. What standards did your inspectors use in grading eggs at the defendant's plant?

Mr. Faulkner: Same objection. The grader, himself, is the only one who could testify what standard he used when he graded.

Mr. Hippeli: The witness has testified that he has been present at the plant with his inspectors, that he has schooled the inspectors, that he has taught them what the standards are and what standards should be used.

Mr. Faulkner: That would be as though a professor of law came in and testified that he saw Mr. Hippeli try a case in accordance with the rules and regulations and instructions he gave him at law school. He could not testify to that. That is his opinion and conclusion.

Mr. Hippeli: Q. Did you ever observe your inspectors grade down at Nye & Nissen's plant in San Francisco? A. Yes. [97]

Q. Did you observe your inspectors place a grad-

(Testimony of Robert B. Mericle.)

ing stamp on a lot of eggs which they graded in San Francisco? A. I did.

Q. What grade did they place on those lots?

Mr. Faulkner: We will object to that until it is brought within the period covered by the indictment.

The Court: He may state what he did at a certain time and place.

Mr. Hippeli: Q. What grade did you place on lots of cases which you inspected from 1943 to the present time?

Mr. Faulkner: We object to that. The indictment was returned in April——

Mr. Hippeli: No, June of 1945.

Mr. Faulker: Is that the date of the indictment?

Mr. Hippeli: June 5.

Mr. Pratt: June 20th.

Mr. Faulkner: The conspiracy ended on the date of the rendition of the first indictment.

The Court: What date was that?

Mr. Faulkner: April 25.

Mr. Hippeli: The first indictment was in April. The indictment under which this charge is brought now was returned in June of 1945. The conspiracy continued up to the date of the return of the indictment, namely, June, 1945.

Mr. Faulkner: We submit the proper date is April 25, the date of the termination of the conspiracy. [98]

Mr. Hippeli: Well, that is not material, anyway, your Honor.

(Testimony of Robert B. Mericle.)

Q. Did you ever stamp cases at Nye & Nissen's from the latter part of 1943 to the 1st of April, 1945? A. Yes.

Q. What stamp did you use down there?

A. The Consumer grade stamp.

Q. What was on the face of that stamp?

A. "U. S. Grade AA" or "U. S. A."

Q. Is a U. S. Grade A egg, is that class of U. S. Grade A eggs a consumer grade class?

A. Yes.

Q. Are the standards of those classes set forth in Defendants' Exhibit A? A. They are.

Q. From the latter part of 1943 to April, 1945, did you receive a call from any of the defendants to inspect eggs down at the Defendant's plant?

A. We did.

Q. How often? A. Practically daily.

Q. Do you recall a specific request to inspect that you had received from some of the defendants?

A. I received some, myself, yes.

Q. Will you give us the approximate date of one of those calls? A. September, 1944.

Q. Did you receive any in the early part of 1944? Did you do any grading down there in the early part of 1944? A. Yes.

Q. Do you recall who asked you to go down and inspect eggs there?

A. That was Mr. Goddard. [99]

Q. Did any of the other defendants call you to go down and inspect eggs at that plant in the early part of 1944? A. They have, yes.

(Testimony of Robert B. Meriele.)

Q. Who were they, please?

A. Mr. Berman or Mr. Moncharsh.

Q. Did Mr. Menges ever call you?

A. Occasionally.

Q. Subsequent to their calls, would you appear at the plant? A. Yes.

Q. What would they ask you to do when you appeared at the plant?

A. They would tell us they had a certain lot of eggs there that they wanted graded. They would tell us the grade of the eggs, and from that we would go ahead and make our grading of the particular lot which they wished graded.

Q. What grade did they mention?

A. They mentioned either U. S. Grade AA or U. S. Grade A.

Q. Are those Consumer grades?

A. Yes.

Q. Are those grades contained in the standards set forth in Defendants' Exhibit A?

A. Yes.

Mr. Hippeli: At this time the Government offers Defendants' Exhibit A in evidence.

The Court: Pardon me?

Mr. Hippeli: I desire to offer Defendants' Exhibit A in evidence. Exhibit A is the Tentative U. S. Standards and Weight classes for Consumer Grades for Shell Eggs.

Mr. Faulkner: We have no objection, your Honor.

The Court: Admitted and marked. [100]

(Testimony of Robert B. Merkle.)

The Clerk: U. S. Exhibit 24 in evidence.

(Defendants' Exhibit A for Identification was admitted in evidence and marked U. S. Exhibit 24.)

Mr. Hippeli: Q. Now, will you explain what the classes or Consumer Grade A eggs are?

Mr. Faulkner: We object. The document that has just been received in evidence describes each of those specifically. It is a matter of reading it into the record. The witness I don't think should be permitted to do that. The document speaks for itself. It describes exactly what they are.

Mr. Hippeli: I desire to accommodate the court's convenience in getting this as clear as I can. I think the document is in evidence, but he can generally tell us what a lot of Consumer Grade A eggs are.

Mr. Faulkner: Which is to bind the defendants, what the witness says or what the document says that came from our possession?

The Court: Read the question.

(Question read by the reporter.)

The Court: I will allow it.

Mr. Faulkner: Exception.

The Court: Overruled.

The Witness: The U. S. Consumer Grade AA consists of 80 percent of the grade U. S. Grade AA eggs. It is broken down into units. We speak [101] of a unit as either one dozen in a dozen carton or a case of eggs, which consists of 30 dozen eggs in a particular case. Eighty percent of the eggs in this

(Testimony of Robert B. Mericle.)

particular case must be of the grade U. S. Grade AA. In the remaining of those 10 percent must be grade U. S. Grade A and the balance be made up of B, with a small tolerance of 5 percent which will take in the human element of candling can be made up of light dirties, grade C or Checks. When we candle the eggs in a particular case as to whether or not what might be required as set down in the specification——

Mr. Faulkner: I move that answer be stricken out because it does not embrace the requirements of a U. S. Consumer's Grade AA egg, according to the paper that has been received in evidence.

Mr. Hippeli: Q. I believe the point as to which Mr. Faulkner——

Mr. Faulkner: Just a minute. I made a legal objection.

The Court: Read the legal objection, Mr. Reporter.

(Record read.)

The Court: It may or may not. Does it? Do you know?

The Witnes: Yes.

The Court: Let the question and the answer stand.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. Does Exhibit U. S. 24 use the express term 5 percent permissive tolerance? [102] Doesn't it rather use, "So many eggs"?

Mr. Faulkner: We object to that. The document speaks for itself.

(Testimony of Robert B. Mericle.)

The Court: Overruled.

Mr. Faulkner: Exception.

The Witness: The tolerance permits 18 eggs per 30 dozen. If you will check that with the case you will find it is 5 percent.

Mr. Hippeli: Q. What is a Consumer Grade A egg?

Mr. Faulkner: The same objection. The document speaks for itself.

The Court: Overruled.

Mr. Faulkner: Exception.

The Witness: The Consumer Grade A, taking the one dozen as a unit, or the 30 dozen case again, we have 80 percent of the eggs in this 30 dozen case, consisting of U. S. Grade A quality eggs; 10 percent must consist of quality U. S. Grade B, and the balance, we have a tolerance in here again of 18 eggs per 30 dozen. Or you could say the eggs——

Mr. Faulkner: Is the witness reading?

The Witness: Could be light dirties.

Mr. Faulkner: Is he reading it?

The Court: Are you reading it, or are you testifying from your own knowledge?

The Witness: I think I was testifying, was I not? [103]

The Court: Proceed.

Mr. Faulkner: May I have the exhibit?

Mr. Hippeli: Q. You were explaining the permissive tolerance of U. S. Consumer Grade A eggs.

A. The permissive tolerance here is—again we have 18 eggs per case which could be made up of

(Testimony of Robert B. Mericle.)

Light Dirties, Cracks, and .3 of that may be small blood spots.

Q. Will you explain what the Consumer Grade B is?

A. Consumer Grade B is the same, where the basic 80 percent of the eggs in the particular case must be of the grade U. S. Grade B; the balance, 10 percent can be of the grade U. S. Grade C and in that we have a tolerance again of——

Q. 36 eggs?

A. 36 eggs tolerance for Checks, Light Dirties.

Q. Just what is meant by the Consumer Grade C?

A. Consumer Grade C, 80 percent of those eggs there, again, must be of the grade U. S. Grade C or better. They have the tolerance of 36 eggs.

Q. Are there any other Consumer grades, Doctor? A. No.

Q. Directing your attention to what is now Government's Exhibit 24, the same document you were referring to, on the bottom part of that I see the expression, "Weight classes." Your previous testimony has been directed to grades as distinguished from weights, is that correct? A. Right.

Q. Has the United States Department of Agriculture established weights for classes of Consumer Grade eggs. A. Yes. [104]

Q. Are those weights included in Government's Exhibit 24? A. They are.

Q. Would you explain the names of the three

(Testimony of Dr. Robert B. Mericle.)

general weight classes that are used in the plants in and around the San Francisco Bay area?

A. Large, Mediums, and Small.

Q. What are their weights, take the net weight of a case.

A. Net weight per case is 45 pounds on the large, 40 pounds on the medium, and 34 pounds on the small.

Q. Is there any permissive weight tolerance?

A. No.

Q. Then a case of Medium eggs must weigh at least 40 pounds net, is that correct?

A. That is correct.

Q. It cannot weigh 39 pounds, is that right?

A. That's right.

Q. In grading a lot of eggs, you can't average the weight of cases to establish the weight of a particular lot?

Mr. Faulkner: We object to that as calling for an opinion and conclusion of the witness. What this witness testifies on that subject would not be binding on any defendant in this case.

The Court: Read the question.

(Question read by the reporter.)

The Court: You may answer. Objection overruled.

Mr. Faulkner: Exception.

The Witness: A. No.

Mr. Hippeli: What is the answer?

A. No.

Mr. Hippeli: The Government next offers for

(Testimony of Dr. Robert B. Mericle.)

identification a document entitled, "U. S. De- [105] partment of Agriculture, Food Distribation Administration, Tentative U. S. Standards for Procurement Grades for Shell Eggs." I offer this for identification.

The Court: It may be admitted and marked.

Mr. Faulkner: Will you Honor indulge me a moment?

The Court: Yes.

Mr. Faulkner: We have no objection to it.

Mr. Hippeli: Going into evidence?

Mr. Faulkner: Going into evidence.

The Court: Let is be admitted and marked in evidence.

(U. S. Exhibit 25 for Identification was thereupon admitted in evidence.)

Mr. Hippeli: Q. Government Exhibit 25 in evidence, Doctor, is a copy of the tentative standards for procurement grades of eggs. You are familiar with that, are you not?

A. Yes.

Q. What are the procurement grades?

Mr. Faulkner: The same objection, your Honor. The document speaks for itself.

The Court: How many pages of that?

Mr. Hippeli: I was limiting this briefly, your Honor. I just wanted to establish by this witness that there were several grades. It is not necessary for me to go through and show what they all are, because they conform generally to the Consumer grades that we have just discussed. [106]

(Testimony of Dr. Robert B. Mericle.)

The Court: Very well.

Mr. Hippeli: Q. Aren't there a number of procurement grades? A. Four.

Q. Where is the procurement grade distinguished from the Consumer Grade?

Mr. Faulkner: The same objection. The two documents may be compared.

Mr. Hippeli: Q. Is a Consumer grade a letter grade? A. No—yes.

Q. The Consumer grade is AA, Grade A, Grade B? A. Yes.

Q. That is Consumer Grade. Is a Procurement Grade a Roman numeral grade? A. It is.

Q. With one—— A. I, II, III and IV.

Q. U. S. Procurement Grade I, II, and so forth.

A. Yes.

Q. For what are the procurement grades used?

A. The procurement grades were issued primarily for use by the armed forces.

Q. Are sales to the U. S. Army graded in accordance with Procurement Grades as distinguished from Consumer Grades?

Mr. Faulkner: We object to that. This witness is employed by the Department of Agriculture, and the United States Army has a different method of inspecting eggs than the Department of Agriculture. The witness has not qualified that he is an expert in that——

Mr. Hippeli: I have not asked the witness [107] to testify to the methods of grading used by the

(Testimony of Dr. Robert B. Mericle.)

United States Army. I have asked him the names of the standards of eggs that are used in the grading by the Army. Government's Exhibit No. 25 will show the standards which are used by the Army have been set by the United States Department of Agriculture. Have they?

The Witness: They are.

The Court: The question and answer will stand. Objection overruled.

Mr. Hippeli: Q. I will just refer to one grade here; Doctor, the Procurement Grade I. Will you read or explain that to the jury, whichever is more convenient for you.

A. Procurement Grade I is identical with the grade just explained in Consumer Grade eggs. The original grade consists of 80 percent of the individual eggs to be of U. S. Grade AA and the balance to be made up as the tolerance just just explained in the Consumer A.

Q. The individual egg in a Procurement Grade is graded in accordance with the standards contained in U. S. Exhibit 22? A. Right.

Q. But the name of the lot, that is the dozen or the case, or the lots of cases are known as "Procurement I" as distinguished from U. S. Consumer Grade AA? A. Correct.

Q. What is a processed egg?

A. A processed egg is an egg that has been dipped in an odorless, tasteless mineral oil. [108]

Q. What is the purpose of processing?

(Testimony of Dr. Robert B. Mericle.)

T. The purpose of processing is for preservation, to preserve the egg qualities.

Q. How does it preserve an egg?

A. It preserves the egg qualities by reducing the moisture evaporation from the egg and thus enhances the keeping qualities, so that they are able to keep eggs in storage and maintain a much better quality than by keeping the same identical egg in storage when it is not processed.

Q. Are you familiar with the United States Department of Agriculture mechanics of shell grading eggs? A. Yes.

Q. Were the same mechanics used under the Department of Agriculture and also during the period *you were* known as the War Food Administration? A. Yes.

Q. Will you explain briefly what facilities are used in grading eggs?

A. In grading eggs it is necessary to have a candler. In this method we look at a light. The firm will tell us, "Here is a hundred cases," or "150 cases," or "50 cases" which they want graded. We will observe this lot, the external appearance; take the required number of samples which we require for various sized lots. These cases will be taken to the candling room for check grading by one of our graders, with the United States Department of Agriculture.

Q. What kind of room is that?

A. That is a candling room. It is a darkened room where we go in, we are in darkness. [109]

(Testimony of Dr. Robert B. Mericle.)

The room is usually painted black inside, and in there we have a candler which we use to look at the interior qualities of each shell egg.

Q. I hand you a candle. Just show it to the jury and it may assist you in your explanation of how you work.

A. This is pushed up, it is used with electricity. There is an electric bulb in here. This is placed in a dark room. There is a ray of light comes out so it enables us to see the interior quality of the egg, and it shows very similar to the charts which were entered as Exhibit 22 this morning.

Q. Would that assist you in your explanation?

A. The appearance that you see here of the interior quality of the egg you can readily see when you are in a dark room when the egg is placed before the candle. The sample eggs will be taken into an inspection booth. There we will check 50 or 100 eggs per half case. We do not check every egg in the case.

Q. How many eggs in a case? A. 360.

Q. How are they arranged in a case?

A. They are in there in fillers. Each filler has three dozen eggs in it.

Q. What is a filler? A. A filler—

Q. Start with a flat.

A. A flat is in the bottom of the case, just the size of a half case of eggs. That is on the bottom. The egg filler comes in then. The filler is the paper standing on the end, like this, which is cut [110] in partitions to keep each egg separate so it will not

(Testimony of Dr. Robert B. Mericle.)

touch the other . . s. That lets the egg stand on the point. They are always packed with the small end down. In that way we have five fillers. They put one filler in. Then another flat goes on, like this, then another filler on top of that, 36 eggs in it, another flat, another filler, and another flat. That is done until we have five fillers on each side of the case.

After these eggs are taken into an inspection booth we will check the top layer—we will start with the top later a running inspection and look at the first, second and third layers. In the next case we will look at the second, third and fourth layers. In the next case we will look at the third, fourth, and fifth layers. In the next case we will look at the first, second and fifth layers. The fifth case we will look at the first, third, and fifth layers. That way it gives us a complete cross section of the eggs in one end of the case. [111]

Q. Is there any other equipment used in grading or weighing your eggs?

A. Scales, individual egg scales.

Q. What does that indicate?

A. That indicates the weight of the individual eggs themselves.

Q. Are there any other scales?

A. We have scales to test, weigh half-cases. In that method we weigh the entire five fillers with the fillers and flats on a large scale.

Q. And after your sample cases have been graded what is done?

Mr. Faulkner: We would like that instrument

(Testimony of Dr. Robert B. Mericle.)

marked for identification. It was used in his testimony.

(The light in question was marked Defendants' Exhibit B for Identification.)

Mr. Hippeli: Q. After you have graded the eggs what is done next?

A. At the time of grading we will note and write down our results of each individual case after we are through grading that particular case, write down the percentage of A's, the percentage of B's and the tolerance for each individual case.

After we are through grading our samples we total up our columns and see that the lot meets the requirement for which it was graded. It might have been graded for U. S. Grade AA Large. It might have been graded for U. S. Grade A. It might have been graded for U. S. Grade A Medium. We check, add up the total of columns to see if it meets the grade. If it meets the grade, our grader will stamp each individual case [112] in the entire lot with the grade designation on the stamp. They are U. S. Grade AA or U. S. Grade A.

Mr. Hippeli: I next desire to have marked for identification facsimile copies of what purports to be United States Department of Agriculture grading stamp.

(The stamp in question was marked U. S. Exhibit No. 26 for Identification.)

Mr. Hippeli: Q. I will show you U. S. Exhibit No. 26. Do you recognize that? A. I do.

(Testimony of Robert B. Mericle.)

Q. What is it?

A. It is a facsimile of the stamp which the graders of the U. S. Department of Agriculture use in identifying products which meet the official grade as set down by the Secretary.

Q. And you made these stamps, did you not?

A. That is right.

Q. Will you read or explain to the Jury just what is contained on your stamp, please?

A. The wording on the stamp——.

Mr. Faulkner: Objection, your Honor. The stamp speaks for itself.

Mr. Hippeli: We have before the Court facsimile copies of the stamp made by the United States Department of Agriculture. The witness has testified that he has made these specific copies. I have asked him to explain to the Jury the content of the stamp.

Mr. Faulkner: There is nothing about that that requires an explanation. It is as plain as day. [113]

Mr. Hippeli: We could exhibit it to the Jury or let him read it to the Jury.

Mr. Faulkner: Let the Jury look at it.

The Court: You may do both so there is no question about it.

Mr. Faulkner: We object to his explaining what the stamp contains, because the stamp speaks for itself. Exception, if the Court permits it.

Mr. Hippeli: Q. That is a facsimile copy of your stamp, if is not?— A. That is right.

Q. You put it on the sheet?

(Testimony of Robert B. Mericle.)

A. That is right.

Q. And you gave it to me?

A. That is right.

Mr. Hippeli: May this be introduced in evidence?

The Court: It may be admitted and marked.

(The copy of the stamp was received in evidence as U. S. Exhibit No. 26.)

Mr. Hippeli: May I have the permission of the Court to pass these samples to the Jury?

Mr. Faulkner: Have you two?

Mr. Hippeli: Yes, they are duplicates.

Mr. Faulkner: You do not want two in evidence, do you?

Mr. Hippeli: No, I was going to pass one to each of the rows of jurors to save time.

Q. These are identical, are they not? You have seen them? A. They are. [114]

(U. S. Exhibit No. 26 was passed to the Jury.)

Mr. Hippeli: Q. Directing your attention to U. S. Exhibit 21, and in particular to the date on that stamp, it that date constant. A. No.

Q. How is it changed?

A. It is changed daily.

Q. What does the date on the stamp represent?

A. Represents the date the eggs were graded.

Q. The Exhibit No. 26 has facsimiles of U. S. Grade AA and U. S. Grade A. Have you other stamps?

(Testimony of Robert B. Mericle.)

A. Yes, we have U. S. Grade B and U. S. Grade C.

Q. The only difference will be instead of your AA and your A it will be B and C on those several stamps? A. That is right.

Q. Where is that stamp placed on those cases of eggs after they have been inspected?

A. Placed on the ends of the cases.

Q. Is it placed on each case? A. Yes.

Q. How long has this method of grading been used by the United States Department of Agriculture, to your knowledge?

Mr. Faulkner: We object to that, your Honor, "this method". Which method?

Mr. Hippeli: The method which the witness has just described.

The Witness: Since the service was started.

Mr. Hippeli: Q. When was that?

A. Thirty years.

Q. Thirty years ago? A. Yes. [115]

Q. Is it used at the present time?

A. Yes, sir.

Q. Is it used around the San Francisco Bay area? A. It is.

Q. Did you use it down at the Nye & Nissen plant in San Francisco? A. We did.

Q. Do you instruct your inspectors to use it down there?

Mr. Faulkner: We object to what he instructed his inspectors to do on the ground it would be hearsay.

(Testimony of Robert B. Mericle.)

Mr. Hippeli: Withdraw the question.

Q. Have you ever graded eggs at the Petaluma plant of the defendant, Nye & Nissen?

A. No.

Q. When did the U. S. consumer grades for classes of shell eggs go into effect approximately?

A. 1942.

Q. Were U. S. Department of Agriculture grades for classes of shell eggs in existence prior to that date? A. Yes.

Q. What were those standards? Give us the names of them generally.

A. We were using the terms U. S. Special——

Mr. Faulkner: Just a moment, if your Honor please. The standards speak for themselves. The documents establishing them speak for themselves. They are not in Court. They are not in our possession.

Mr. Hippeli: I did not think it necessary to introduce those standards inasmuch as we were primarily concerned with the standards which were introduced. However, under the allegations of the indictment I desire to offer proof that the United States Department of Agriculture had standards which [116] were in effect prior to the date of the effective date of the consumer grades.

Mr. Faulkner: What they were will be spoken from the document itself.

The Court: Read the question.

(Question read.)

(Testimony of Robert B. Mericle.)

The Court: The objection will be overruled. I will allow it.

Mr. Faulkner: Exception.

The Witness: A. There were U. S. Specials, U. S. Extras, U. S. Standards, U. S. Trade.

Mr. Hippeli: Q. Was there a United States Department of Agriculture standard for an individual shell egg in existence prior to the year 1943 when the standards referred to this morning went into effect?

Mr. Faulker: I object to that, if the Court please. In other words, this witness—may I call the Court's attention to this situation as developed in this regard? From the possession of the defendant there was produced a document which is now in evidence, U. S. Exhibit No. 24, and it is dated in December, 1942, and it relates to the tentative U. S. consumer grades for shell eggs, and it provides in that document that U. S. Consumer Grade AA shall consist of a certain type of egg, in certain percentages, and Grade A a certain type of egg and certain percentages. Now, that document does not disclose the [117] test to be applied to that egg. You cannot apply the tests that come out afterwards, that are subsequent to December, 1942, as the description of the eggs defined in that regulation, because they were not in existence. Now, the witness has testified that this is what governed the trade in this district from the date of its issuance to the present time. The definition of Grade AA, Grade A, Grade B and Grade C is the definition of those eggs at the

(Testimony of Robert B. Mericle.)

time of the issuance of that document, and that is not before the Court, and you can't issue a directive to an industry relating to standards then in existence, describe them, and define them clearly and unequivocally as they have, and then try to apply another standard that came out later, as the standard that is intended to be covered by this document. That is my point. In 1942, December 23, your could not have a standard of eggs that was promulgated, described, and defined in January of 1943. It was non-existent. But there was at that time in existence a standard.

The Court: Q. Is there a variation in these standards from time to time?

A. There are slight revisions in them when they are reissued.

Q. What if any variation is there in the period in question here, if you know?

A. I can't recall. I would suggest that they check the specification that was in effect prior to 1942.

Mr. Faulkner: The point I make, your Honor, is that these specifications speak for themselves. That is what governs the industry.

Mr. Hippeli: Q. May I direct your attention to the effective date of Government's Exhibit 24, Doctor? Is that the standard for Consumer Grade A? A. Yes.

Q. What is the effective date?

A. The effective date is December 23, 1942.

Q. Will you refer to the Government's exhibit

(Testimony of Robert B. Mericle.)

setting forth the Department of Agriculture standards for individual shell eggs?

Mr. Faulkner: You can give him the date, Mr. Hippeli.

Mr. Hippeli: Q. I notice on the back, Doctor, that it is dated the second day of January, 1943?

A. Right.

Q. Now, to your knowledge, is there any additional document that connects the consumer grades with the specification for individual shell egg?

Mr. Faulkner: Your Honor, we object.

The Court: Q. Do you understand that question? A. Not clearly, no.

Mr. Hippeli: Q. Your standard for your consumer grade eggs—— A. Yes?

Q. ——is dated in 1942, and it refers to a Grade A egg. The definition of a Grade A egg appears in the first part of 1943. A. Right. [119]

Q. Now, in 1942 when the consumer grades for shell eggs were issued, what defined a U. S. Grade A egg?

A. The specification that was in effect for the individual shell egg at that time.

Q. And there was a specification in effect prior to the one we have before us here? A. Yes.

Q. Have you that specification in your possession? A. Not here, no.

Q. You have it in your custody down at the office, have you not? A. Yes.

Q. And you received that specification from the Department of Agriculture in Washington?

(Testimony of Robert B. Mericle.)

A. That is right.

Q. Was that official specification for the individual shell egg in effect until the specification for individual shell eggs dated January of 1943?

A. Yes.

Mr. Faulkner: If the Court please——

Mr. Hippeli: I ask permission of the Court to allow Dr. Mericle, to afford him an opportunity to bring down the specification for individual shell eggs that was in existence for that period of a few weeks.

The Court: You may bring it in tomorrow morning.

Mr. Hippeli: Thank you.

Mr. Faulkner: We may have it now, your Honor. We will find out. I thought we had, your Honor, but evidently we have not.

Mr. Hippeli: Q. Doctor, we were inquiring as to whether [120] there were United States Department of Agriculture standards for individual shell eggs that were in effect prior to January 3, 1943, the date of the issuance of the standards which are in evidence. A. There was.

Q. Were they generally in conformity with the standards effective on January 3, 1943?

Mr. Foulkner: We will object to that as calling for his opinion and conclusion, your Honor.

Mr. Hippeli: I am asking the witness to testify generally if there were Department of Agriculture standards fixing the grade of individual eggs in effect prior to those which are in evidence. I do not

(Testimony of Robert B. Mericle.)

desire, although I will if the Court requests, to introduce the grades in effect before that time, because I do not think they will become a material part of our case. But under the charge of the indictment, the indictment has alleged that the business conducted by the defendants in the sale, inspection and grading of eggs were subject to Department of Agriculture standards, and I want to establish at this time that certain standards did exist, although, as I say, what the particular standard prior to those in evidence was, I do not deem material, but I want to establish that there were some standards.

Mr. Faulkner: Your Honor, wouldn't it be true that an industry such as Nye & Nissen would be subject to those standards by virtue of law, not by virture of anything this witness said? [121]

The Court: Read the question.

(The last question was read.)

The Court: I will allow it.

Mr. Faulkner: Exception.

A. Yes.

Mr. Hippeli: That is all, your Honor.

The Court: We will take a recess for a few minutes. The jurors may be excused.

(Recess.) [122]

Cross-Examination

Mr. Faulner: Q. Doctor, you have testified that on occasion you were at the firm of Nye & Nissen, it that correct? A. That's right.

(Testimony of Dr. Robert B. Mericle.)

Q. I would like you to tell me the first time you ever met or talked to Mr. Menges. Will you stand up, Mr. Menges? What is the first time you ever talked to that man? A. In 1944.

Q. In what month?

A. I am not positive. I think along in May.

Q. May. Now, then, what was the first time you ever met Mr. Berman? Will you stand up, Mr. Berman? A. The fall of 1943.

Q. The fall of 1943? A. Yes.

Q. When is the first time you ever telephoned, talked on the phone to Mr. Berman?

A. I don't recall.

Q. Do you ever recall talking on the telephone to Mr. Berman at any time at all? A. Yes.

Q. When? A. In 1944.

Q. What month?

A. The spring. I don't remember specifically what month.

Q. In the spring? A. Yes.

Q. What was the subject of the conversation?

A. With reference to egg inspections.

Q. Did he make any request of you—withdraw that. What conversation did you have?

A. On the phone, you are referring to? [123]

Q. Yes. What did he say to you and what did you say to him?

A. Requested egg inspections.

Q. No. What did he say to you and what did you say to him?

(Testimony of Dr. Robert B. Mericle.)

A. He requested that we make a grading at the plant of Nye & Nissen, egg grading.

Q. Did you go out subsequent to that and make the inspection?

A. One of my graders from the San Francisco office went out.

Q. Pardon me?

A. One of our graders in the San Francisco office went out.

Q. Did you go out? A. I did not, no.

Q. Did you ever go out to Nye & Nissen to grade eggs at the request of Mr. Berman, yourself?

A. No.

Q. Did you ever go out and were you present when eggs were graded in Nye & Nissen at a time when Mr. Berman asked someone to go out to grade eggs? A. No.

Q. When was the first time you ever met Mr. Goddard? Do you know Mr. Goddard?

A. Yes.

Q. When was the first time you ever saw Mr. Goddard? So the jury will understand, Mr. Goddard will you stand up? A. In 1943.

Q. What time? A. The fall.

Q. Did you ever have a conversation on the telephone with Mr. Goddard in respect to an inspection being called for eggs? A. Yes. [124]

Q. When? A. In 1944.

Q. What month? A. The spring.

Q. When you say "the spring", what do you call spring?

(Testimony of Dr. Robert B. Mericle.)

A. I don't recall exactly; along in March or April.

Q. That is the first time he ever requested an inspection by you, is that correct?

A. To my knowledge, yes.

Q. After that conversation did you go out and inspect any eggs in the plant of Nye & Nissen, yourself?

A. No.

Q. Were you present when any inspector went out and graded eggs at Nye & Nissen as a result of a phone call?

A. Yes.

Q. You were?

A. The specific call, you mean where I took the call?

Q. The specific call. Mr. Goddard phoned you and asked for an inspection. Were you ever present when—were you present when the inspector went out to make the grading of the eggs that he telephoned concerning?

A. May I qualify my answer on that?

Q. I don't know whether you can, or not. The judge will tell you that. You have to answer first.

A. The majority of calls are received in our office by a girl. It is very seldom that they are not received by the girl. In a few instances where I received them it had been early in the morning, and before the girl had arrived. For that reason the times that I have accompanied the grader to the plant has been in instances where the call had been received by the girl in the office. [125]

Q. Isn't it a fact the general request for an egg

(Testimony of Dr. Robert B. Mericle.)

inspection was made by the telephone operator at Nye & Nissen? A. No.

Q. It is not. All right. That is your qualification. Now, will you give me the answer that that qualified, please? Answer the question.

A. No.

Q. You testified that you, personally, had a conversation with Mr. Goddard in which Mr. Goddard asked for an egg inspection. I asked you if you were present at the time the egg inspection which he requested was done. A. No, I was not.

Q. When was the first time that you talked to Mr. Abe Moncharsh about an egg inspection?

A. 1943, in the fall.

Q. Fall of 1943. A. Fall of 1943.

Q. Is that the only occasion. A. No.

Q. Did you have many requests for egg inspections in which Mr. Moncharsh requested them personally? A. No.

Q. How many, would you say you had in the period of time from the time you came out here up to April 25, 1945?

A. The number I personally received?

Q. The number of times Mr. Moncharsh personally asked an egg inspection of you.

A. None

Q. Maybe I misunderstood. I thought you said you had a phone call by Mr. Moncharsh in the fall of 1943 in connection with an egg inspection.

A. Our office had; I did not say I personally had.

(Testimony of Dr. Robert B. Mericle.)

Q. I am talking about you, personally. You, personally, never had any conversation with Mr. Moncharsh, is that correct? [126]

A. Regarding his request for an inspection, I personally have not, no.

Q. Doctor—if I call you Mister it is not being impolite, I want to correct myself—Doctor, you have testified to matters concerning a candling room in the firm of Nye & Nissen. Where is the candling room?

A. It is located close to the shipping office, as I recall. I think they call it the shipping office.

Mr. Hippeli: I suggest you identify the plant which you are referring to.

Mr. Faulkner: The one you referred to this morning where you saw this Exhibit No. 22.

A. Yes.

Mr. Hippeli: At what plant did you see that?

Mr. Faulkner: What?

Mr. Hippeli: I was asking him at what plant he saw that.

A. That is the present plant, that is the only one they have been in since I have been in San Francisco.

Mr. Faulkner: Q. It is on Missouri, at Seventeenth Street. As you go into that plant on the Seventeenth Street entrance there is somewhere in the plant a candling room. Where is that candling room?

A. Which is the Seventeenth Street entrance? Is that the loading side?

(Testimony of Dr. Robert B. Mericle.)

Q. The one that goes east and west.

A. As you go into the plant on the Seventeenth Street entrance, say this were the [127] Seventeenth Street side, the north side of the jury room, here, the candling booth would be on the far end of the building, the south.

Q. Have you ever been in that candling room?

A. I have.

Q. Is it your testimony, Doctor, that in that candling room they have Exhibit 22 on the wall?

A. I have seen it there, yes.

Q. When did you see it there?

A. At times when I have been in the room.

Q. Whereabouts on the wall is it?

A. Just inside—there is a door at the end of the candling room. It is inside the door, on the wall.

Q. On the wall just as you enter the room?

A. Right.

Q. You know, as a matter of fact, Doctor, that Exhibit 22 is not used by candlers in the candling of eggs in a plant like Nye & Nissen's plant, don't you? A. Know that it is not used?

Q. Yes; it is not used. That is right, isn't it?

A. I don't know.

Q. Have you ever seen egg candlers use it in candling plants? A. Yes.

Q. You have seen it many times?

A. That's right.

Q. Isn't that right? A. Yes.

Q. How many eggs does a normally able candler candle in an hour?

(Testimony of Dr. Robert B. Mericle.)

A. How many eggs, or cases?

Q. Pardon me? [128]

The Court: He wants to know whether you want eggs or cases of eggs.

Mr. Faulkner: How many eggs will an ordinary candler candle in an hour; either cases or eggs?

A. Approximately three cases.

Q. Three cases would be 1080 eggs, is that right?

A. Yes.

Q. In an hour, when a candler is candling 1080 eggs, the candler has to take the eggs out of the filler, place them in a convenient position, lift the eggs out of the filler, hold them to the light, and then deposit them in anywhere from two to fourteen boxes and place the bad eggs away, isn't that usually the practice? A. Yes.

Q. So that 1080 eggs candled in an hour, it is done with almost lightning rapidity? A. Yes.

Q. So fast you can't see the egg move and see how the person takes the egg and gets it to the light; isn't that correct? You can't follow the egg in the hand of the candler, isn't that correct?

A. Almost that fast. I would say quite fast. You can follow it.

Q. Doctor, you testified this morning with certain interruptions by counsel, for which I may have been the main transgressor, you testified at great length on these various grades of eggs, these various refinements in grading the eggs, and how a candler forms a judgment concerning all of those things with a rapidity that almost is faster than

(Testimony of Dr. Robert B. Mericle.)

the eye can follow [129] the movement of the egg in the hands of the candler.

A. I would say not quite that fast.

Q. 1080 eggs a minute—I mean an hour, that is just a normal candling. When going through that process does any normal candler ever look at Exhibit 22 to candle eggs by?

A. It is used as a guide.

Q. Have you ever seen in your life a competent candler, candle eggs, look at the eggs before the light at one time and United States Exhibit 22 at the other? A. Yes.

Q. Where?

A. When you are training candlers.

Q. What?

A. When you are training them.

Q. I am talking about a plant, an indusfrial plant.

Mr. Hippeli: You asked him did he ever see it.

Mr. Faulkner: All right. I will withdraw that.

Q. In other words, when you start out to train them your train them with a card like this?

A. Yes.

Q. Have you ever seen a competent professional candler, the type that would work for Nye & Nissen, or anyone else, examine an egg and compare it with a card like Exhibit 22? A. Yes, I have.

Q. Where?

A. In a number of plants. They will do that when they have eggs they are candling and they are in doubt as to the proper grade of the egg.

(Testimony of Dr. Robert B. Mericle.)

Q. What plant, name the plant?

A. A Poultry Producers plant.

Q. Where?

A. A number of their branches, Sacramento plant, [130] Stockton plant.

Q. When did you see that?

A. When I have been in those plants.

Q. Give me a time when you have been in the plant and have seen a professional candler, in the process of candling eggs, compare the eggs with that card. A. May, 1944. [130-a]

Mr. Faulkner: Q. Pardon me?

A. In May of 1944.

Q. Have you ever seen anyone do it in 1945?

A. Yes.

Q. Where? A. Los Angeles.

Q. What plant?

A. Mandell and Company.

Q. Pardon me? A. Mandell.

Q. In those instances that occurred when there was a dispute with someone over the candling of a particular egg, didn't it? A. Yes.

Q. But in the ordinary process of candling the eggs, apart from any disputes with the Department of Agriculture or anybody else as to the quality of a given egg, do they use that card, Exhibit 22?

A. What is your question again?

The Court: Read it.

(Question read.)

A. Occasionally, yes.

Mr. Faulkner: Q. As a matter of fact, Doctor,

(Testimony of Dr. Robert B. Mericle.)

is it not true that this Exhibit 22, which you saw in the Nye & Nissen plant, was in an egg candling booth especially prepared by Nye & Nisen for the Department of Agriculture inspectors?

A. One in the candling room also.

Q. Isn't that the only place where there is a card? A. Pardon?

Q. Isn't ~~that the~~ only place in that plant where there is that card?

A. I don't know, but I know it is there. I do not know about other places.

Q. You do not know of any other place?

A. I said in the [131] candling room.

Q. Is there one in the candling booth that was especially erected for the Department of Agriculture and the army inspectors? A. Yes.

Q. In addition to that you say there is one in the candling room? A. Yes.

Q. In your work in supervising the candling of eggs is it required that your inspectors compare the eggs with Exhibit 22?

A. They do, when there are questionable eggs, yes.

Q. Does the experience of those inspectors require them to use Exhibit 22 in order to determine the quality of an egg, the general run of your inspectors?

A. It is used as a guide, yes.

Q. Do they normally and customarily use it as a guide? A. At various times, yes.

Q. You have testified that you have had as in-

(Testimony of Dr. Robert B. Mighele.)

spectors working under your supervision Gordon Reid, David Moosman, Mr. Schumaker, Mr. Rosenberger and Mr. Blum. Do those men require Exhibit 22 to help them grade an egg?

A. Require it?

Q. Yes. Do they require Exhibit 22 to help them grade an egg? A. Yes.

Q. Doctor, isn't it true that any competent inspector can look at an egg and form an opinion without looking at Exhibit 22 without any trouble at all?

A. Yes, but this is still used as a guide. [132]

Q. There is nothing official about this guide, is there? Exhibit 22—is it official? Is there anything official about this guide? Isn't it merely an illustration to show the uninitiated what to expect to find in an egg? Isn't that what it purports to be?

A. That is what it is.

Q. Now, then, the guide to the inspectors is the rules and regulations, isn't it? A. Yes.

Q. In other words, the thing that determines whether an egg comes within a particular category in the eyes of a competent inspector is his knowledge of the definition of a standard fixed by the Department of Agriculture and his opinion of whether it comes within that standard, isn't that correct? A. That is correct.

Q. And this document here, Exhibit 22, which the jurors all had, is just something like a printed book that you give a child to illustrate something he does not know much about, isn't that right?

(Testimony of Dr. Robert B. Mericle.)

Mr. Hippeli: We object to that as argumentative, your Honor.

Mr. Faulkner: I think it is clear to the witness, your Honor.

The Court: Read the question.

(Question read.)

The Court: I will allow it. You may answer.

A. I wouldn't say that, no. [133]

Mr. Faulkner: May I have that answer read?

(Answer read.)

Mr. Faulkner: Q. Then I will ask you, Doctor, will you state to me what official relation that card has to egg inspections under the standards set out by the Department of Agriculture, what official relation it has to those standards?

A. It is put out by the U. S. Department of Agriculture by the Secretary's office.

Q. Is that your complete answer?

A. Yes.

Q. You are familiar with this Exhibit 22 and have been for a long period of time, isn't that correct? A. Yes.

Q. When did you first see one?

A. Exhibit 22?

Q. Yes. When did you first see Exhibit 22 or a counterpart of it?

A. About 1941 or '2, I think. I am not positive as to the date that came out.

Q. Would it be in the year 1941 or 1942, one or the other?

(Testimony of Dr. Robert R. Mericle.)

A. I am not positive. It was at the time the grades were changed over.

Q. Would it be before the year 1943.

A. Yes.

Q. So that this morning when you testified at some length that U. S. Exhibit No. 22 was identical with U. S. Exhibit 21, the fact was that this exhibit was in existence before regulation or direction to inspectors 21 came into being, isn't that correct? Isn't that right? A. Yes.

Q. Now, you testified at the close of your testimony that there [134] was in December of 1942 a bulletin and a regulation defining the standard or qualities of eggs in existence in December of 1942, is that right? A. Yes.

Q. Have you made a search for that regulation?

A. No.

Q. Did you search for it before you came into court? A. No.

Q. You have testified that Exhibit No. 22 is practically identical with the standards that were in existence in December of 1942, is that your testimony? A. Yes.

Q. Pardon me? A. Yes.

Mr. Hippeli: I might suggest that you show him the exhibits.

Mr. Faulkner: He did not have the exhibits when he testified to that.

Q. Now, I would ask you to define how a grade AA egg, under the standards in existence in December of 1942, was described and how it was defined?

(Testimony of Dr. Robert B. Mericle.)

A. Is that the standards according to Exhibit 22?

Mr. Hippeli: The effective date of the change is December——

Mr. Faulkner: Just a moment, if the Court please. Mr. Hippeli's role is to make legal objections, I respectfully submit, not to aid the witness at any time by explanations or otherwise. I have asked the witness a very simple question. Before the recess he testified that the standards in existence before December, 1942 were identical with those in existence under Regulation 41 in January. I have now asked the witness [135] to define the regulations, define the requirements of a Grade AA egg in December, 1942.

The Witness: They are similar to the various quality factors as the one which was approved in 1942. The air cell was one-eighth inch in depth. It was regular. The shell was clean, normal, uniform. The white was firm and clear. The yolk—I am not clear as to the yolk definition.

Mr. Faulkner: Q. How was the egg described? What was the descriptive word applied to the egg?

A. U. S. Special or AA.

Q. U. S. Special what?

A. Or U. S. Grade AA.

Q. In 1942 they used either term, is that right, and prior to that?

A. Prior to that they did.

Q. I mean in December of 1942 did they use U. S. Special or Grade AA——

Mr. Hippeli: Did who use it?

(Testimony of Dr. Robert B. Meriele.)

Mr. Faulkner: The Department of Agriculture in defining the standard for eggs.

A. Prior to that, yes.

Mr. Faulkner: Q. In December what was the nomenclature used in the bulletins of the Department of Agriculture referring to the highest grade of consumer eggs? A. U.S. Special or AA.

Q. Now, what was the nomenclature used to describe the next grade of eggs?

A. U. S. Extra or A.

Q. And what was the next in quality described as? A. U. S. Standard or B [136]

Q. And what was the next?

A. U. S. Trade or C.

Q. You testified this morning, as distinguished from this afternoon, as to the requirements of this Exhibit 21, which were rules and regulations to be employed for the grading and certification of shell eggs by official graders. Is it not a fact, Doctor, that Exhibit No. 21 is a directive to employees of the Department of Agriculture who are engaged in the work of certifying eggs, grading them and certifying them?

A. Directive to the employees? Yes, to the graders.

Q. Isn't that correct—graders who are certifying eggs? A. Yes.

Q. Now, the act of grading and certifying eggs is an altogether different operation in its entirety from the act of going down and inspecting eggs, isn't it? Isn't that correct?

(Testimony of Dr. Robert B. Mericle.)

A. No, I wouldn't say that.

Q. Do eggs have to be inspected or certified by the Department of Agriculture to be sold?

A. No.

Q. You say that the act of grading and certifying eggs is not a dissimilar operation in the egg business than that of inspecting, is that correct?

A. Is not the same as inspecting?

Q. Yes. You say it is the same?

A. What do you mean by inspecting?

Q. You testified here that on occasions you were requested by Nye & Nissen to come down and have his eggs inspected? A. Yes.

Q. Was that operation similar in any way to an over all [137] operation relating to grading and certification of eggs? Aren't they two different operations in the business?

A. What do you mean by grading? Do you mean the plant grading or our grading?

Q. Do you not understand the question?

A. Not clearly, no.

Q. Is there an operation in the egg business known as grading and certifying eggs?

A. Yes.

Q. Describe that operation to the jury, please.

A. Grading is the actual candling of eggs into the respective grades. Certifying eggs is packing eggs under certificates of quality where you have limited licensed candlers doing the actual candling operations, and the eggs are packed and sold under certificates of quality.

(Testimony of Dr. Robert B. Mericle.)

Q. That is what grading and certifying eggs means, isn't it?

A. That is certifying eggs, yes.

Q. Will you describe the operation in which you go in and inspect eggs for shipment?

A. The eggs are already graded and our grader goes in and pulls a sample from the respective lot which they want graded and grades the eggs as previously mentioned in the sample cases which he draws.

Q. Now, then, the duties and services performed by the Department of Agriculture when you grade and certify eggs are completely dissimilar from the duties you perform when you inspect eggs, aren't they? A. Yes.

Q. As a mater of fact, you do not grade or certify eggs at the [138] Nye & Nissen plant in San Francisco, do you?

A. We grade eggs, yes.

Q. I mean grade and certify. There are two acts as one continuous operation?

A. No, we do not grade and certify.

Q. The term grading and certifying means that the graders are bonded and that the assembly of eggs under that operation are certified to and certificates are issued and they are all done under the supervision of the Department of Agriculture, isn't that right? A. That is right.

Q. In the shipments to various war agencies that is not the operation followed at all, is it?

A. No.

(Testimony of Dr. Robert B. Mericle.)

Q. So that the inspection of graders and certifiers of eggs and how they shall conduct that work is dissimilar to the instructions to graders and inspectors who are inspecting for war shipments, isn't that correct?

A. Different instructions?

Q. Yes? A. No, I would not say so.

Q. Is there a single instruction—I am talking about definitions—is there a single instruction to guide an inspector for war shipments contained in Exhibit 21? A. Yes.

Q. Where is it?

A. It is the interpretation of the individual——

Q. Read the instruction, please.

A. Interpreting the individual quality of the individual shell egg.

Q. What number. Give me the number of the instruction.

A. The individual shell egg quality is there.

Q. This is a definition of quality, a standard of quality established by the Department of Agriculture. I asked you to show me a single instruction relating to inspecting eggs for war shipment contained in Exhibit 21.

A. There isn't any.

Q. Now, there are instructions which the inspectors are required to follow in determining the quality of shipments of eggs to war agencies, isn't that right? Aren't there instructions?

A. Instructions for grading shell eggs, whether they go to war agencies or not.

(Testimony of Dr. Robert B. Mericle.)

Q. Aren't there particular instructions relating to the grading of eggs that are to be inspected for war agencies? Yes or no, please? A. Yes.

Q. Have you got them?

A. Not here, no.

Q. Will you bring them tomorrow morning, please?

Mr. Hippeli: I object to that, your Honor. If he wants to introduce those, let him make them part of his own case. They are beyond the scope of the direct examination.

Mr. Faulkner: If you Honor please, the direct examination directly indicated to this jury that all of this testimony related to something relating to the subject matter of the indictment, that those were the things that were supposed to be done, and they do not relate to that subject matter at all; and I submit I am entitled on cross-examination to produce the accurate record of what did guide these men doing the things this witness testified to on direct examination. [140]

The Court: You have asked for some documents. What are they?

Mr Faulkner: I have asked him for the instructions to the inspectors of the Department of Agriculture which they were to obey in inspecting eggs for war shipments during the period.

The Court: Are there some instructions available in that respect?

A. No specific instructions for shipping, no.

The Court: There are no specific instructions.

(Testimony of Dr. Robert B. Mericle.)

Mr. Faulkner: He said a moment ago he had them in his office.

The Court: I just asked him. You may pursue your inquiry further.

Mr. Faulkner: Q. Which is correct? The answer you gave his Honor or the answer you gave me?

A. Specific instructions for war shipping we do not have.

Q. Have you specific instructions for grading eggs and inspecting grades for sale to war agencies?

A. No.

Q. What were the instructions you said you had a moment ago down at your office?

A. Instructions for making individual shell egg gradings, whether they are for war agencies or otherwise.

Q. Doctor, you do not make individual shell egg gradings when you inspect for a war agency, do you?

A. Yes. It is a regular inspection for a particular lot of eggs that we conduct. There [141] are a hundred cases that they want graded, whether it goes to a war agency or otherwise. The grading of that is performed identical, whether it is a commercial grading or a contract grading for the war agency.

Q. Dr. Mericle, is it not a fact that if any war agency which the Department of Agriculture is grading for receives an order for eggs, they do not give an individual shell egg inspection? Yes or no?

(Testimony of Dr. Robert B. Mericle.)

A. They get an individual shell egg inspection, yes.

Q. The answer is yes?

The Court: Read the answer.

(Answer read.)

Mr. Faulkner: Q. If a war agency—if it is the Navy, or the War Shipping Administration—ordered 500 cases of eggs, in all likelihood less than one percent would be shell egg inspected, isn't that true, instead of 100 percent?

A. Are you speaking of cases or the actual number of cases?

Q. I am talking about 500 cases of eggs. We will assume, to make it clear, there are 500 cases of eggs in this room going to a ship. A. Yes.

Q. And you are going to inspect them. Your testimony is that you shell inspect each egg, isn't it, up to this point? A. No, it is not.

Q. What do you do?

A. I said we inspect the required number of samples for the 500 cases. [142]

Q. Is the required number of samples called for in Exhibit 21? A. No.

Q. They are called for in a regulation, aren't them, the number of cases that you pick out and inspect does not depend on your judgment? They are limited in a regulation, isn't that true?

Mr. Hippeli: I object to that as beyond the scope of the direct examination.

The Court: The objection is overruled.

Mr. Faulkner: Q. Isn't that true, Doctor?